



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,199	05/14/2001	Vijaya Raghavan	MWS-07ORCE3	8175
74321 7590 09/21/2009 LAHIVE & COCKFIELD, LLP/THE MATHWORKS FLOOR 30, SUITE 3000 One Post Office Square Boston, MA 02109-2127				
EXAMINER				
ALHUA, SAIF A				
ART UNIT		PAPER NUMBER		
2128				
MAIL DATE		DELIVERY MODE		
09/21/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/855,199	Applicant(s) RAGHAVAN ET AL.
Examiner SAIF A. ALHIJA	Art Unit 2128

--THE MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): None.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kamini S Shah/
Supervisory Patent Examiner, Art Unit 2128

Continuation of 11, does NOT place the application in condition for allowance because:

Applicants argue that the combination of Kodosky and Toepe do not teach the function prototype aspect of the claims. The Examiner notes the combination of the graphical aspect of functions recited in both Kodosky and Toepe and the explicit recitation in Toepe of function prototypes in view of the obviousness statement made by the Examiner reads on the claims as presented. More specifically the Examiner noted that it would be obvious to utilize the function prototyping in Toepe for the graphical programming in Kodosky since graphical languages are well suited for object oriented implementation and are commonly used in distributed control systems. This is further reinforced by the inherent aspect of function prototypes used in defining function calls in numerous programming languages including those that are not graphically based.

Applicants further argue that the combination of references do not teach calling a function by a function name as well as the syntax of the function call. The Examiner notes that the function naming displayed in Kodosky Figure 19 and the aspects of function creation, modification, and invocation recited in paragraph 166 of Kodosky read on these limitations. Further the Examiner notes that Toepe discusses function names and variables in Section 7.2. Finally the Examiner notes that function prototyping, syntax, and invocation are basic elements and aspects of computer programming and do not represent a novel feature. Applicants are merely incorporating the basic elements of computer programming into a graphical environment. The graphical environment recitations of Kodosky and Toepe as well as their respective citations read on these limitations specifically in view of the obviousness rationales under KSR v. Teleflex, such as combining prior art elements according to known methods to yield predictable results, the Use of known technique to improve similar devices (methods, or products) in the same way, and Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. The Examiner cannot see how the implementation of a graphical environment as presented in the references cannot be combined with the basic aspects of programming in function prototyping, syntax, and invocation. Therefore the rejection is MAINTAINED.

The Examiner notes that no specific arguments were made regarding the dependent claims other than alleging that they do not teach.

Due to the Examiners arguments above and the nature of the claims the Examiner respectfully requests that Applicants respond to this office action with either more explicit rationale for patentable distinction over the prior art, an amendment of the claims to overcome the prior art rejections, or a notice of appeal in order to further prosecution of the instant application.